

1 ROBBINS GELLER RUDMAN  
2 & DOWD LLP  
3 RYAN A. LLORENS (225196)  
4 BRIAN O. O'MARA (229737)  
5 LAURIE L. LARGENT (153493)  
6 655 West Broadway, Suite 1900  
San Diego, CA 92101  
Telephone: 619/231-1058  
619/231-7423 (fax)  
[ryanl@rgrdlaw.com](mailto:ryanl@rgrdlaw.com)  
[bomara@rgrdlaw.com](mailto:bomara@rgrdlaw.com)  
[llargent@rgrdlaw.com](mailto:llargent@rgrdlaw.com)

[Proposed] Lead Counsel for Plaintiff

[Additional counsel appear on signature page.]

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

DANIEL TUROCY, Individually and  
on Behalf of All Others Similarly  
Situated,

Case No. 8:15-cv-01343-DOC(KESx)

## CLASS ACTION

**MEMORANDUM OF LAW IN  
SUPPORT OF MOTION FOR  
APPOINTMENT AS LEAD  
PLAINTIFF AND APPROVAL OF  
LEAD PLAINTIFF'S SELECTION OF  
COUNSEL**

DATE: November 30, 2015

TIME: 8:30 a.m.

**CTRM:** 9D

JUDGE: Hon. David O. Carter

1           Proposed lead plaintiffs and El Pollo Loco Holdings, Inc. investors Peter Kim,  
 2 Robert W. Kegley, Sr., Dr. Richard Levy and Samuel Tanner (together, the “El Pollo  
 3 Loco Investors Group”) respectfully submit this memorandum in support of its motion  
 4 for appointment as lead plaintiff and approval of its selection of Robbins Geller  
 5 Rudman & Dowd LLP as lead counsel for the class pursuant to the Private Securities  
 6 Litigation Reform Act of 1995 (“PSLRA”).

7 **I. INTRODUCTION**

8           A putative class action lawsuit is pending in this District on behalf of  
 9 purchasers of El Pollo Loco Holdings, Inc. (“El Pollo Loco” or the “Company”)  
 10 common stock between May 15, 2015 and August 13, 2015, inclusive (the “Class  
 11 Period”) seeking to pursue remedies pursuant to the Securities Exchange Act of 1934  
 12 (the “1934 Act”). In federal securities cases such as this, the PSLRA requires courts  
 13 to appoint as lead plaintiff the “member or members of the purported plaintiff class  
 14 that the court determines to be most capable of adequately representing the interests of  
 15 class members.” 15 U.S.C. §78u-4(a)(3)(B)(i). The El Pollo Loco Investors Group  
 16 should be appointed as lead plaintiff because it: (1) timely filed this Motion; (2) has  
 17 the largest financial interest in the outcome of this litigation of any plaintiff of which  
 18 its counsel is aware; and (3) will adequately represent the interests of the class. *See* 15  
 19 U.S.C. §78u-4(a)(3)(B)(iii). In addition, the El Pollo Loco Investors Group’s  
 20 selection of Robbins Geller as lead counsel for the class should be approved. *See* 15  
 21 U.S.C. §78u-4(a)(3)(B)(v).

22           El Pollo Loco develops, franchises, licenses, and operates quick-service  
 23 restaurants in the United States.

24           During the Class Period, defendants made false and misleading statements  
 25 and/or failed to disclose adverse information about El Pollo Loco’s business and  
 26 prospects, including that traffic at El Pollo Loco stores had declined substantially due  
 27 to the removal of the value items from the restaurants’ menu boards, and that as a  
 28 result, comparable store sales were not growing at 3%, much less the 3% to 5% the

1 defendants had led investors to believe they would grow in the second quarter of  
 2 2015. As a result of these false and misleading statements and/or omissions, El Pollo  
 3 Loco common stock traded at artificially inflated prices during the Class Period, with  
 4 the Company's stock price reaching a high of \$25.37 per share.

5 After the close of trading on August 13, 2015, the Company issued a release  
 6 announcing its second quarter 2015 results for the three-month period ended July 1,  
 7 2015. El Pollo Loco disclosed that contrary to defendants' prior claims of being on  
 8 track to achieve 3%-5% comparable store sales increases, second quarter 2015  
 9 "[s]ystem-wide comparable restaurant sales [had grown] 1.3%, including a 0.5%  
 10 decrease for company-operated restaurants, and a 2.6% increase for franchised  
 11 restaurants."

12 On this news, the price of El Pollo Loco's shares declined by 20% from its  
 13 closing price of \$18.36 per share on August 13, 2015, to \$14.56 per share on August  
 14, 2015.

### 15 III. ARGUMENT

#### 16 A. The El Pollo Loco Investor Group Should Be Appointed 17 Lead Plaintiff

18 The PSLRA establishes the procedure for the appointment of a lead plaintiff in  
 19 "each private action arising under [the 1934 Act] that is brought as a plaintiff class  
 20 action pursuant to the Federal Rules of Civil Procedure." 15 U.S.C. §78u-4(a)(1).  
 21 First, the pendency of the action must be publicized in a widely circulated national  
 22 business-oriented publication or wire service not later than twenty days after filing of  
 23 the first complaint. 15 U.S.C. §78u-4(a)(3)(A)(i). Next, the PSLRA provides that the  
 24 Court shall adopt a presumption that the most adequate plaintiff is the person or group  
 25 of persons that –

- 26     (aa) has either filed the complaint or made a motion in response to a notice . . . ;
- 27     (bb) in the determination of the court, has the largest financial interest in the  
 28 relief sought by the class; and

(cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

3 15 U.S.C. §78u-4(a)(3)(B)(iii); *see also In re Cavanaugh*, 306 F.3d 726 (9th Cir.  
4 2002). The El Pollo Loco Investors Group meets each of these requirements and  
5 should therefore be appointed as Lead Plaintiff.

## **1. This Motion Is Timely**

The notice published in the first-filed action on August 24, 2015, advised class members of: (1) the pendency of the action; (2) the claims asserted therein; (3) the proposed class period; and (4) the right to move the Court to be appointed as lead plaintiff within 60 days, or by October 23, 2015. 15 U.S.C. §78u-4(a)(3)(A). *See* Declaration of Brian O. O’Mara in Support of Motion for Appointment as Lead Plaintiff and Approval of Lead Plaintiff’s Selection of Counsel (“O’Mara Decl.”), Ex. A. Because this motion is being timely filed by October 23, the El Pollo Loco Investors Group is entitled to be considered for appointment as lead plaintiff.

**2. The El Pollo Loco Investors Group Has the Largest Financial Interest in the Relief Sought by the Class**

16 During the Class Period, the El Pollo Loco Investors Group purchased 113,610  
17 shares of El Pollo Loco common stock and suffered more than \$823,000 in losses as a  
18 result of defendants' alleged misconduct. *See* O'Mara Decl., Exs. B, C. To the best  
19 of its counsel's knowledge, there are no other plaintiffs with a larger financial interest.  
20 Therefore, the El Pollo Loco Investors Group satisfies the PSLRA's prerequisite of  
21 having the largest financial interest.

### **3. The El Pollo Loco Investors Group Otherwise Satisfies the Rule 23 Typicality and Adequacy Requirements**

In addition to possessing a significant financial interest, a lead plaintiff must also “otherwise satisf[y] the requirements of Rule 23 of the Federal Rules of Civil Procedure.” 15 U.S.C. §78u-4(a)(3)(B)(iii)(I)(cc). Rule 23 of the Federal Rules of Civil Procedure requires that “the claims or defenses of the representative parties are

1 typical of the claims or defenses of the class; and [that] the representative parties will  
 2 fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(3)-(4);  
 3 *Cavanaugh*, 306 F.3d at 730 (focusing “in particular” on typicality and adequacy at  
 4 the lead plaintiff stage).

5 The test of typicality is ““whether other members have the same or similar  
 6 injury, whether the action is based on conduct which is not unique to the named  
 7 plaintiffs, and whether other class members have been injured by the same course of  
 8 conduct.”” *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (citation  
 9 omitted). The adequacy requirement is met if no conflicts exist between the  
 10 representative and class interests and the representative’s attorneys are qualified,  
 11 experienced and able to vigorously prosecute the action on behalf of the class. *See*  
 12 Fed. R. Civ. P. 23(a)(4); *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003).

13 Here, the El Pollo Loco Investors Group’s claims are based on the same legal  
 14 theory (violations of the federal securities laws) and arise from the same events and  
 15 course of conduct (defendants’ allegedly false or misleading statements) as the class’s  
 16 claims. The El Pollo Loco Investors Group also satisfies the adequacy requirements  
 17 because there is no conflict between it and the members of the class, its selected  
 18 counsel is qualified (as discussed in §III.B below) and the El Pollo Loco Investors  
 19 Group has a sufficient interest in the outcome based upon the significant damages  
 20 suffered as a result of defendants’ purported misrepresentations. Moreover, the El  
 21 Pollo Loco Investors Group is committed to “vigorously representing the interests of  
 22 all class members to obtain the largest practicable recovery for the class consistent  
 23 with [its] dut[y] as lead plaintiff.” *See O’Mara Decl.*, Ex. D at ¶7.

24 The El Pollo Loco Investors Group’s common interests shared with the class,  
 25 substantial financial interest in the litigation, and selection of qualified counsel  
 26 demonstrate that it satisfies the Rule 23 inquiry at this stage.  
 27  
 28

1           **B. The Court Should Approve the El Pollo Loco Investors  
2           Group's Selection of Counsel**

3           The PSLRA vests authority in the lead plaintiff to select and retain lead counsel,  
4           subject to the Court's approval. *See* 15 U.S.C. §78u-4(a)(3)(B)(v). The Court should  
5           not disturb the lead plaintiff's choice of counsel unless it is necessary to "protect the  
6           interests of the class." 15 U.S.C. §78u-4(a)(3)(B)(iii)(II)(aa); *see also In re Cohen*,  
7           586 F.3d 703, 711-12 (9th Cir. 2009); *Cavanaugh*, 306 F.3d at 732-35.

8           The El Pollo Loco Investors Group has selected Robbins Geller to serve as lead  
9           counsel. *See* O'Mara Decl., Ex. D at ¶10, Ex. E. Robbins Geller, a 200-lawyer firm  
10          with offices nationwide, regularly practices complex securities litigation. *Id.* Courts  
11          throughout the country, including those in this District, have noted Robbins Geller's  
12          reputation for excellence, which has resulted in the appointment of Robbins Geller  
13          attorneys to lead roles in hundreds of complex class action securities cases. *See, e.g.*,  
14          *In re Cooper Cos. Sec. Litig.*, 254 F.R.D. 628, 636 (C.D. Cal. 2009) (Carney, J.)  
15          (noting that it was "undisputable" that Robbins Geller lawyers have "extensive  
16          experience prosecuting suits of this nature"); *In re Enron Corp. Sec.*, 586 F. Supp. 2d  
17          732, 797 (S.D. Tex. 2008) (commenting that the "experience, ability, and reputation"  
18          of Robbins Geller's attorneys "is not disputed; it is one of the most successful law  
19          firms in securities class actions, if not the preeminent one, in the country"). Class  
20          members will receive the highest caliber of legal representation available from  
21          Robbins Geller if this Motion is granted.

22           Accordingly, the El Pollo Loco Investors Group's selection of counsel should  
23          be approved.

## **IV. CONCLUSION**

The El Pollo Loco Investors Group has satisfied each of the PSLRA's requirements for appointment as lead plaintiff. Accordingly, the El Pollo Loco Investors Group respectfully requests that the Court appoint it as lead plaintiff, approve its selection of counsel and grant such other relief as the Court may deem just and proper.

DATED: October 23, 2015

Respectfully submitted,

ROBBINS GELLER RUDMAN  
& DOWD LLP  
RYAN A. LLORENS  
BRIAN O. O'MARA  
LAURIE L. LARGENT

s/ Brian O. O'Mara  
**BRIAN O. O'MARA**

655 West Broadway, Suite 1900  
San Diego, CA 92101  
Telephone: 619/231-1058  
619/231-7423 (fax)

[Proposed] Lead Counsel for Plaintiff

ZELDES HAEGGQUIST & ECK, LLP  
AMBER L. ECK  
225 Broadway, Suite 2050  
San Diego, CA 92101  
Telephone: 619/342-8000  
619/342-7878 (fax)

### **Additional Counsel**

**CERTIFICATE OF SERVICE**

I hereby certify that on October 23, 2015, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America  
that the foregoing is true and correct. Executed on October 23, 2015.

s/ Brian O. O'Mara  
BRIAN O. O'MARA

ROBBINS GELLER RUDMAN  
& DOWD LLP  
655 West Broadway, Suite 1900  
San Diego, CA 92101-8498  
Telephone: 619/231-1058  
619/231-7423 (fax)

E-mail: bomara@rgrdlaw.com

## Mailing Information for a Case 8:15-cv-01343-DOC-KES Daniel Turocy v. El Pollo Loco Holdings, Inc. et al

### Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Mary K Blasy**  
mblas@rgrdlaw.com,e\_file\_sd@rgrdlaw.com
- **Darren J Robbins**  
e\_file\_sd@rgrdlaw.com
- **Laurence M Rosen**  
lrosen@rosenlegal.com
- **Jason D Russell**  
jrussell@skadden.com,Winston.Hsiao@skadden.com,nandi.berglund@skadden.com,jason.russell@skadden.com
- **Evan Jason Smith**  
esmith@brodsky-smith.com

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The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

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